

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:19-cv-00135-MR**

MATTHEW JAMES GRIFFIN,)
)
Plaintiff,)
)
vs.) **ORDER**
)
ERIK A. HOOKS, et al.,)
)
Defendants.)
)

THIS MATTER is before the Court on Plaintiff's "Fourth Motion for a 180 Day Extension of Time Within Which to Join/Substitute Parties, Complete Discovery and Serve Process under Rule 4(m)" [Doc. 72], Plaintiff's Motion to Compel Discovery [Doc. 73], and Plaintiff's "Motion for Entry of Default as a Sanction Under Rules 37(d)" [Doc. 76].

Pro se Plaintiff Matthew James Griffin's Second Amended Complaint, brought pursuant to 42 U.S.C. § 1983, survived initial review on November 14, 2019, against Defendants Hooks, Guice, Lassiter, Dye, Beaver, Couch, Wallace, Clifton, Quinn, Caldwell, Clawson, and Doe Defendants #2 through #40. [Doc. 16]. All Defendants except Defendant Caldwell and the Doe Defendants have been served and have answered the Plaintiff's Second Amended Complaint. [Doc. 49; see Doc. 27]. On March 6, 2020, the Court

granted Plaintiff's motion for an additional ninety (90) days from the original service deadline of February 12, 2020, to serve Defendant Caldwell. [Doc. 52]. On March 25, 2020, the Court entered a PTOCMP, which set the deadline to join or add parties as May 12, 2020; the deadline to complete discovery as July 23, 2020; and the deadline to file dispositive motions as August 22, 2020. [Doc. 53]. On June 8, 2020, on Plaintiff's motion, the Court allowed Plaintiff an additional sixty (60) days under Rule 4(m) of the Federal Rules of Civil Procedure to serve process on the remaining unserved Defendants, making the deadline to serve July 13, 2020. [Doc. 57]. The Court also extended the scheduling order deadlines by sixty (60) days, making the current discovery deadline September 23, 2020. [Id.]. Thereafter, the Court, on Plaintiff's motion, extended the deadline to substitute the true names of the Doe Defendants and to serve the newly identified Defendants and Defendant Caldwell to August 27, 2020. [Doc. 66]. As grounds for that motion, Plaintiff stated that he had "served discovery requests calculated to identify Unknown Doe Defendants and to locate Defendants Caldwell [] on June 17th, 19th, 20th and 23rd, 2020, and Defendants had not yet responded to those requests. [Id. at 4].

Plaintiff now moves for 180 additional days within which to join or substitute parties, to complete discovery, and to serve process under Rule

4(m). [Doc. 72]. As grounds, Plaintiff states the following:

Plaintiff propounded to Defendants five (5) discovery requests on 17Jun20, 19Jun20, 20Jun20, 20June20 and 23Jun20 designed to identify and locate the Doe Defendants and obtain the full name and address of Defendant Caldwell. The purpose of locating and identifying Defendants is so they may be joined, substituted and served. Defendants failed to respond to all five (5) discovery requests. On August 10, 2020, Plaintiff sent five (5) Discovery meet and confer letters. See, Exhibits #1 through #5 attached hereto. Opposing counsel failed to respond to the Letters. Id. Counsels [*sic*] failure to respond has caused Plaintiff to be unable to comply with the scheduling deadlines in this case. See, doc. 57 and 66 (establishing deadlines).

Doc. 72 at 4-5]. These discovery requests are directed at Defendants Hooks, Dye, and Clawson. [See Docs. 72-1 to 72-5]. Apparently, these Defendants have yet to respond to the subject discovery requests.

Plaintiff also now moves to compel Defendants' responses to these requests [Doc. 73] and for entry of default against Defendants Hooks, Dye, and Clawson as a sanction for their failure to respond to the requests [Doc. 76]. On September 23, 2020, the Court, on Defendant's motion, extended Defendants' deadline to respond to Plaintiff's motion to compel to September 29, 2020. Defendants, however, never responded to Plaintiff's motion to compel.

The Court will grant Plaintiff's motion for more time in part. Plaintiff shall have an additional 60 days within which to join or substitute parties and to serve process under Rule 4(m) of the Federal Rules of Civil Procedure on Defendant Caldwell and any newly identified Doe Defendants. Any other relief sought in Plaintiff's motion [Doc. 72] will be denied without prejudice. If such Defendants are served within this deadline set by the Court, the parties may have 60 days from service of the last such Defendant within which to conduct discovery as to these newly served Defendants only. The parties may seek further extension of the dispositive motions' deadline if necessary.

The Court will also grant Plaintiff's motion to compel insofar as Defendants Hooks, Dye, and Clawson will be ordered to respond to Plaintiff's discovery requests [Doc. 73-6 at 2-8; Doc. 73-7 at 2-3; Doc. 73-8 at 2-4; 73-9 at 2-4; Doc. 73-10 at 2-18] within 14 days of this Order. Any further relief sought in Plaintiff's motion to compel will be denied without prejudice.

The Court will deny Plaintiff's motion for entry of default as a sanction for Defendants' failure to respond to discovery. The Court will, however, require counsel for Defendants to show cause for Defendants' failure to respond to Plaintiff's discovery requests and for Defendants' failure to respond to Plaintiff's motion to compel after seeking an extension of time to

respond.

ORDER

IT IS, THEREFORE, ORDERED that Plaintiff's motion [Doc. 72] is **GRANTED IN PART** and **DENIED IN PART** in that Plaintiff shall have an additional 60 days within which to join or substitute parties and to serve process under Rule 4(m) of the Federal Rules of Civil Procedure on Defendant Caldwell and any newly identified Doe Defendants. Any other relief sought in Plaintiff's motion [Doc. 72] is denied without prejudice.

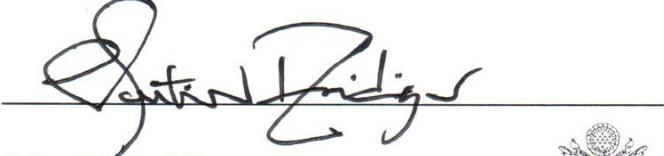
IT IS FURTHER ORDERED that Plaintiff's motion to compel [Doc. 73] is **GRANTED IN PART** and **DENIED IN PART** in that Defendants Hooks, Dye, and Clawson shall respond to Plaintiff's discovery requests as set forth in this Order within 14 days of this Order. Any other relief sought in Plaintiff's motion to compel is denied without prejudice.

IT IS FURTHER ORDERED that Plaintiff's motion for entry of default [Doc. 76] is **DENIED**.

IT IS FURTHER ORDERED that counsel for Defendants Hooks, Dye, and Clawson shall show cause within ten (10) days of this Order for these Defendants' failure to respond to the subject discovery requests and for these Defendants' failure to respond to Plaintiff's motion to compel after seeking an extension of time to respond.

IT IS SO ORDERED.

Signed: October 13, 2020



Martin Reidinger
Chief United States District Judge

